

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROQUEENA LACHELL SELLERS,

Defendant-Appellant.

UNPUBLISHED

August 29, 2006

No. 260815

Oakland Circuit Court

LC No. 2004-195323-FH

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

A jury convicted defendant Roqueena Lachell Sellers of possession with intent to deliver cocaine less than 50 grams,¹ felon in possession of a firearm (felon in possession),² and two counts of possession of a firearm during the commission of a felony (felony-firearm).³ The trial court sentenced her to concurrent terms of one to thirty years' imprisonment for cocaine possession and one to seven and one-half years for felon in possession. These sentences were to run consecutively to two concurrent two-year terms for felony-firearm. Sellers now appeals by right her convictions for felon in possession and both counts of felony-firearm. We affirm. We decide this appeal without oral argument.⁴

I. Basic Facts And Procedural History

This case arises out of a search warrant executed on Sellers' home on November 19, 2003. Police officers attached to the Oakland County Sheriff's Department Narcotic Enforcement team searched Sellers' residence pursuant to a warrant. According to the officers' testimony, Sellers was present during the search, along with her mother, three other adults, and four or five children from four- to seven-years-old. Under the sink in a second-floor bathroom, police officers found a purse that contained Sellers' identification and a plastic baggy containing crack cocaine.

¹ MCL 333.7401(2)(a)(iv).

² MCL 750.224f.

³ MCL 750.227b.

⁴ MCR 7.214(E).

A bedroom across the hall from the bathroom contained women's clothing, and mail and bills with Sellers' name on them. Next to the bookcase stereo, police discovered an electronic scale, packaging material consisting of sandwich bags, and approximately \$9,705 in cash. Some of the money was located in an empty cigarette box and in the pockets of the female clothing. Police found Sellers' Michigan health card with folded bills in a leather jacket. The scale had cocaine residue on it. The bedroom also contained a .38 revolver under the bed. Police found a phone bill with Sellers' name on it in the area where the gun was located.

Sellers acknowledged that she knew the cocaine was in her purse. However, she maintained that it was not hers. She also admitted that the bedroom in which the scales, gun, and money were found was her bedroom. She did not say that anyone else lived in the room with her. But she maintained that the gun, the packaging, and the scale were not hers. Sellers stated that she did not know who owned those items.

The parties stipulated that Sellers had a prior criminal record and that she was not permitted to possess a firearm at the time of the search.

II. Constructive Possession

A. Standard Of Review

Sellers argues that the prosecution failed to present sufficient evidence to support her convictions for felon in possession and felony-firearm.

We review *de novo* a defendant's allegations of insufficiency of the evidence.⁵ In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt.⁶ However, we do not interfere with the jury's role of determining the weight of the evidence or the credibility of the witness.⁷ Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and reasonable inferences arising therefrom.⁸ It is for the trier of fact to determine what inferences can be fairly drawn from the evidence and the weight accorded to those inferences.⁹ We must resolve all conflicts in the evidence in favor of the prosecution.¹⁰

⁵ *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

⁶ *Id.*

⁷ *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1202 (1992).

⁸ *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

⁹ *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

¹⁰ *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

B. Proximity On Offense Dates

Sellers does not challenge the sufficiency of the evidence supporting her conviction for possession with intent to deliver cocaine. Instead, she challenges the sufficiency of the evidence as it relates to the possession of the firearm. The elements of felon in possession are: (1) the defendant was in possession of a firearm, and (2) the defendant had previously been convicted of a specified felony.¹¹ The elements of felony-firearm are: (1) the possession of a firearm, (2) during the commission of, or the attempt to commit, a felony.¹²

Sellers maintains that the prosecutor presented insufficient evidence that she possessed the firearm, as opposed to others present in the home at the time of the raid. She argues that mere knowledge of the weapon is not enough and that the prosecutor failed to present sufficient evidence that the firearm was accessible to her at the time of the search.

“Possession may be actual or constructive and may be proved by circumstantial evidence.”¹³ A person can have constructive possession if the firearm’s location is known to the person and is reasonably accessible to her.¹⁴ Both of the challenged felonies here require that the prosecutor prove that Sellers possessed the firearm. But, contrary to Sellers’ assertion, the ability to possess the weapon at the time of the search is not dispositive of whether this element has been satisfied. Possession is not determined at the time of the raid or the arrest but at the time that the felony is being committed.¹⁵ Further, “[a] drug possession offense can take place over an extended period, during which an offender is variously in proximity to the firearm and at a distance from it. In a case of that sort, the focus would be on the offense dates specified in the information.”¹⁶

Here, all three of Sellers’ firearm-related convictions were essentially predicated on her involvement with the possession and distribution of the cocaine. Given the extent of the cocaine distribution materials in Sellers’ bedroom and the large amount of money in the room, it is evident that a large part of the operation occurred in that room. The gun was located in a small room, under the bed, near Sellers’ phone bill, in the epicenter of the drug activity. Therefore, the prosecution provided sufficient evidence to show that the gun was readily accessible to Sellers during the ongoing possession felony. The prosecution showed more than mere proximity. Further, Sellers concedes that the prosecutor presented evidence that she knew of the existence of the weapon. Accordingly, we hold that a reasonable trier of fact viewing the facts in the light most favorable to the prosecution could conclude beyond a reasonable doubt that Sellers had constructive possession of the gun during the commission of a felony.

¹¹ MCL 750.224f(2); CJI2d 11.38a.

¹² MCL 750.227b; *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

¹³ *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000).

¹⁴ *Id.*

¹⁵ *Id.* at 438-439.

¹⁶ *Id.* at 439.

III. Double Jeopardy

Sellers also argues that her convictions for felon in possession and felony-firearm violate the federal and state prohibitions against double jeopardy. She acknowledges, however, our Supreme Court's decision in *People v Calloway*,¹⁷ holding that there is no violation of the double jeopardy clause under these circumstances. We are bound by stare decisis to follow the decisions of the Michigan Supreme Court.¹⁸

Affirmed.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder

¹⁷ *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003).

¹⁸ *People v Hall*, 249 Mich App 262, 270; 643 NW2d 253 (2002).